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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,912	06/22/2005	Michel Dron	046658/288239	8805

826 7590 08/06/2007
ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER

HISSONG, BRUCE D

ART UNIT	PAPER NUMBER
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1646

MAIL DATE	DELIVERY MODE
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08/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,912

Applicant(s)

DRON ET AL.

Examiner

Bruce D. Hisson, Ph.D.

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11 and 13-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-9, 11 and 13-27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: sequence comparison.

DETAILED ACTION

Election/Restrictions

A. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-2 and 11, drawn to isolated polypeptides.

Group II, claim(s) 3-7, 9, 11, 14, 18-20, and 26, drawn to isolated polynucleotides, expression vectors, host cells, antisense nucleotides, primers, and probes.

Group III, claim(s) 8 and 17, drawn to antibodies specific for the polypeptide of group I.

Group IV, claim(s) 13, drawn to a method of treatment comprising administration of a polypeptide of group I.

Group V, claim(s) 15, drawn to a method of identifying a compound having immunomodulatory activity.

Group VI, claim(s) 16, drawn to a polynucleotide capable of expressing *in vivo* an antisense sequence.

Group VII, claim(s) 21-24, drawn to a method of predicting responsiveness of a patient to treatment with a type I interferon.

Group VIII, claim(s) 25, drawn to a non-human transgenic animal.

Group IX, claim(s) 27, drawn to a method of treatment comprising administering a polynucleotide of group II.

B. The inventions listed as Groups I – IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The first claimed invention fails to share a special technical feature with the other claims. PCT rules define a special technical feature as a feature that makes a contribution over the art. Claim 1 has no such special technical feature in view of Azimzai *et al* (US 2005/0048490). Claim 1 is drawn to an isolated polypeptide comprising a sequence selected from different embodiments, including a fragment of SEQ ID NO: 2 which retains substantially similar function selected from immunomodulatory activity and/or anti-viral activity and/or anti-tumour activity. Azimzai *et al* teaches a polypeptide with 70% homology to the polypeptide of SEQ ID NO: 2 (see sequence comparison). This polypeptide, which exhibits 100% homology over a range of approximately 1300 amino acids and is approximately 400 amino acids shorter than SEQ ID NO: 2, can be considered a "fragment" of SEQ ID NO: 2. Furthermore, the claims do not set forth the limits or degree of "substantial" immunomodulatory, antiviral, or anti-tumour activity, and therefore any degree of any "immunomodulatory activity" would meet this claim limitation. In the absence of evidence to the contrary, the polypeptide of Azimzai *et al* would be expected to exhibit some degree of immunomodulatory activity. Therefore, because Azimzai *et al* specifically teaches a fragment of SEQ ID NO: 2, wherein said fragment retains "substantial immunomodulatory" activity, claim 1 cannot share a special technical feature with the other claims.

C. Applicant is also advised that the reply to this requirement, to be complete, must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

D. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

E. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

F. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce D. Hissong, Ph.D., whose telephone number is (571) 272-3324.

Art Unit: 1646

The examiner can normally be reached M-F from 8:30 am - 5:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol, Ph.D., can be reached at (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BDH
Art Unit 1646

/Robert S. Landsman/
Primary Examiner, Art Unit 1647

SEQUENCE COMPARISON - 10/523,912

RESULT 2

US-10-491-213-3

; Sequence 3, Application US/10491213
; Publication No. US20050048490A1
; GENERAL INFORMATION:
; APPLICANT: INCYTE CORPORATION; AZIMZAI, Yalda;
; APPLICANT: BAUGHN, Mariah R.; BECHA, Shanya D.;
; APPLICANT: BOROWSKY, Mark L.; CHAWLA, Narinder K.;
; APPLICANT: ELLIOTT, Vicki S.; EMERLING, Brooke M.;
; APPLICANT: GANDHI, Ameena R.; GIETZEN, Kimberly J.;
; APPLICANT: GORVAD, Ann E.; GRIFFIN, Jennifer A.;
; APPLICANT: HAFALIA, April J.A.; ISON, Craig H.;
; APPLICANT: KABLE, Amy E.; KALAFUS, Daniel P.;
; APPLICANT: LEHR-MASON, Patricia M.; LU, Dyung Aina M.;
; APPLICANT: MARQUIS, Joseph P.; NGUYEN, Dannie B.;
; APPLICANT: RAMKUMAR, Jayalaxmi; RICHARDSON, Thomas W.;
; APPLICANT: KAREHT, Stephanie K.; SWARNAKAR, Anita;
; APPLICANT: TANG, Y. Tom; TRAN, Uyen K.;
; APPLICANT: WARREN, Bridget A.; XU, Yuming;
; APPLICANT: YAO, Monique G.; YUE, Huibin;
; APPLICANT: YUE, Henry
; TITLE OF INVENTION: PROTEINS ASSOCIATED WITH CELL GROWTH, DIFFERENTIATION,
AND DEATH
; FILE REFERENCE: PF-1213 USN
; CURRENT APPLICATION NUMBER: US/10/491,213
; CURRENT FILING DATE: 2004-03-26
; PRIOR APPLICATION NUMBER: PCT/US02/31095
; PRIOR FILING DATE: 2002-09-26
; PRIOR APPLICATION NUMBER: US 60/326,389
; PRIOR FILING DATE: 2001-09-28
; PRIOR APPLICATION NUMBER: US 60/327,380
; PRIOR FILING DATE: 2001-10-05
; PRIOR APPLICATION NUMBER: US 60/328,186
; PRIOR FILING DATE: 2001-10-05
; PRIOR APPLICATION NUMBER: US 60/329,690
; PRIOR FILING DATE: 2001-10-12
; PRIOR APPLICATION NUMBER: US 60/345,384
; PRIOR FILING DATE: 2001-10-26
; PRIOR APPLICATION NUMBER: US 60/348,165
; PRIOR FILING DATE: 2001-10-26
; PRIOR APPLICATION NUMBER: US 60/350,219
; PRIOR FILING DATE: 2001-11-02
; PRIOR APPLICATION NUMBER: US 60/344,518
; PRIOR FILING DATE: 2001-11-09
; PRIOR APPLICATION NUMBER: US 60/345,143
; PRIOR FILING DATE: 2001-11-09
; Remaining Prior Application data removed - See File Wrapper or PALM.
; NUMBER OF SEQ ID NOS: 114
; SOFTWARE: PERL Program
; SEQ ID NO 3
; LENGTH: 1397
; TYPE: PRT
; ORGANISM: Homo sapiens
; FEATURE:
; NAME/KEY: misc_feature
; OTHER INFORMATION: Incyte ID No: 4160218CD1
US-10-491-213-3

Query Match 70.1%; Score 7027; DB 5; Length 1397;
Best Local Similarity 99.3%; Pred. No. 0;

Matches 1364; Conservative 2; Mismatches 8; Indels 0; Gaps 0;

```
Qy      416 MATKLDNFNMPLSVFPYYASLGTALYGKEKPLIKLPAPFEESLDLPLWKFLQKKNHLIEE 475
      |||
Db       1 MATKLDNFNMPLSVFPYYASLGTALYGKEKPLIKLPAPFEESLDLPLWKFLQKKNHLIEE 60

Qy      476 INDEMRRCHCELTWSQLSGKVTIRPAATLVNEGRPRIKTWQADTSTTLSSIRSKYKVNPI 535
      |||
Db       61 INDEMRRCHCELTWSQLSGKVTIRPAATLVNEGRPRIKTWQADTSTTLSSIRSKYKVNPI 120

Qy      536 KVDPTMWDTIKNDVKDDRILIEFDTLKEMVILAGKSEDVQSIEVQVRELIESTTQKIKRE 595
      |||
Db      121 KVDPTMWDTIKNDVKDDRILIEFDTLKEMVILAGKSEDVQSIEVQVRELIESTTQKIKRE 180

Qy      596 EQSLKEKMIISPGRYFLLCHSSLLDHLLTECPEIEICYDRVTQHLCLKGPSADVYKAKCE 655
      |||
Db      181 EQSLKEKMIISPGRYFLLCHSSLLDHLLTECPEIEICYDRVTQHLCLKGPSADVYKAKCE 240

Qy      656 IQEKVYTMAQKNIQVSPEIFQFLQQVNWKEFSKCLFIAQKILALYELEGGTTVLLTSCSSE 715
      |||
Db      241 IQEKVYTMAQKNIQVSPEIFQFLQQVNWKEFSKCLFIAQKILALYELEGGTTVLLTSCSSE 300

Qy      716 ALLEAEKQMLSALNYKRIEVENKEVLHGKKWKGLTHNLLKKQNSSPNTVIINELTSETTA 775
      |||
Db      301 ALLEAEKQMLSALNYKRIEVENKEVLHGKKWKGLTHNLLKKQNSSPNTVIINELTSETTA 360

Qy      776 EVIITGCVKEVNETYKLLFNVEQNMKIERLVEVKPSLVIDYDKTEKKLFWPKIKKVNVO 835
      |||
Db      361 EVIITGCVKEVNETYKLLFNVEQNMKIERLVEVKPSLVIDYDKTEKKLFWPKIKKVNVO 420

Qy      836 VSFNPENKQKGILLTGSKTEVLKAVIDIVQVWDSVCVKSVDKPGAKQFFQDKARFYQS 895
      |||
Db      421 VSFNPENKQKGILLTGSKTEVLKAVIDIVQVWDSVCVKSVDKPGAKQFFQDKARFYQS 480

Qy      896 EIKRILFGCYIELQENVMKEGGSPAGQKCFRTVLAPGVVLIVQQGDLARLPVDVVNAS 955
      |||
Db      481 EIKRILFGCYIELQENVMKEGGSPAGQKCFRTVLAPGVVLIVQQGDLARLPVDVVNAS 540

Qy      956 NEDLKHYGGLAAALSKAAGPELQADCDQIVKREGRLPGNATISKAGKLPYHHVIHAVGP 1015
      |||
Db      541 NEDLKHYGGLAAALSKAAGPELQADCDQIVKREGRLPGNATISKAGKLPYHHVIHAVGP 600

Qy     1016 RWSGYEAPRCVYLLRRAVQLSLCLAEKYKYRSIAIPAISGVSFGFPLGRCVETIVSAIKE 1075
      |||
Db      601 RWSGYEAPRCVYLLRRAVQLSLCLAEKYKYRSIAIPAISGVSFGFPLGRCVETIVSAIKE 660

Qy     1076 NFQFKKDGHCLEIYLVDVSEKTVEAFEAIVKTVFKATLPDTAAPPGLPPAAAGPGKTSW 1135
      |||
Db      661 NFQFKKDGHCLEIYLVDVSEKTVEAFEAIVKTVFKATLPDTAAPPGLPPAAAGPGKTSW 720

Qy     1136 EKGSLVSPGGLQMLLVKEGVQNAKTDVVVNSVPLDLVLSRGPLSKSLLEKAGPELQEELD 1195
      |||
Db      721 EKGSLVSPGGLQMLLVKEGVQNAKTDVVVNSVPLDLVLSRGPLSKSLLEKAGPELQEELD 780

Qy     1196 TVGQGVAVSMGTVLKTSSWNLDCRYVLHVVAPEWRNGSTSSLKIMEDIIRECMEITESLS 1255
      |||
Db      781 TVGQGVAVSMGTVLKTSSWNLDCRYVLHVVAPEWRNGSTSSLKIMEDIIRECMEITESLS 840

Qy     1256 LKSIAFFPAIGTGNLGFPPKNIFAELIIESEVFKFSSKNQLKTLQEVHFLHPSDHENIQAFS 1315
      |||
Db      841 LKSIAFFPAIGTGNLGFPPKNIFAELIIESEVFKFSSKNQLKTLQEVHFLHPSDHENIQAFS 900

Qy     1316 DEFARRANGNLVSDKIPKAKDTQGFYGTVSSPDSGVYEMKIGSIIFQVASGDITKEETDV 1375
```


Db	901		DEFARRANGNLVSDKIPKAKDTQGFYGTVSSPD SGVYEMKIGSIIFQVASGDITKEEADV	960
Qy	1376		IVNSTSNSFNLKAGVSKAILECAGQNVRECSQQAQQRKNDYIITGGGFLRCKNIIHVIG	1435
Db	961		IVNSTSNSFNLKAGVSKAILECAGQNVRECSQQAQQRKNDYIITGGGFLRCKNIIHVIG	1020
Qy	1436		GNDVKSSVSSVLQECEKKNYSSICLPAIGTGNAQHDPDKVAEAIIDAIEDFVQKGSQSV	1495
Db	1021		GNDVKSSVSSVLQECEKKNYSSICLPAIGTGNAQHDPDKVAEAIIDAIEDFVQKGSQSV	1080
Qy	1496		KKVKVVIFLPQVLDVIFYANMKKREGTQLSSQQSVMSKSLASFLGFSKQSPQKKNHLVLEKK	1555
Db	1081		KKVKVVIFLPQVLDVIFYANMKKREGTQLSSQQSVMSKSLASFLGFSKQSPQKKNHLVLEKK	1140
Qy	1556		TESATFRVCGENVTCVEYAIISWLQDLIEKEQCPYTSEDECIKDFDEKEYQELNELQKKLN	1615
Db	1141		TESATFRVCGENVTCVEYAIISWLQDLIEKEQCPYTSEDECIKDFDEKEYQELNELQKKLN	1200
Qy	1616		INISLDHKRPLIKVLGISRDVMQARDEIEAMIKRVRLAKEQESRADCISEFIEWQYNDNN	1675
Db	1201		INISLDHKRPLIKVLGISRDVMQARDEIEAMIKRVRLAKEQESRADCISEFIEWQYNDNN	1260
Qy	1676		TSHCFNKMTNLKLEDARREKKKTVDVKINHRHYTVNLNTYTATDTKGHSLSVQRLTKSKV	1735
Db	1261		TSHCFNKMTNLKLEDARREKKKTVDVKINHRHYTVNLNTYTATDTKGHSLSVQRLTKSKV	1320
Qy	1736		DIPAHWSMDKQQNFCVVELLPSDPEYNTVASKFNQTCSHFRIEKIERIQNPDLW	1789
Db	1321		DIPAHWSMDKQQNFCVVELLPSDPEYNTVASKFNQTCSHFRIEKVSLLLECSFW	1374